Office of Chief Counsel Internal Revenue Service

memorandum

CC:WR:SCA:SD:POSTF-110348-02

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4	at	Δ.	

4/05/02

to:

Revenue Agent, Laguna Niguel

from:

LMSB Practice Group, San Diego

subject:

EIN:

ADVISORY OPINION: Consent Language -- Form 872

This memorandum responds to your request for assistance dated February 27, 2002. This memorandum should not be cited as precedent.

ISSUES

- Who is the proper party to execute Form 872 (Consent to Extend the Time to Assess Tax) for the & Subsidiaries consolidated group's taxable year ending , and what is the proper language for the Form 872?
- Who is the proper party to execute Form 872 (Consent to Extend the Time to Assess Tax) for and Subsidiaries consolidated group's taxable year ending _____, and what is the proper language for the Form 872?

CONCLUSIONS

Under Temp. Treas. Reg. section 1.1502-77T(a)(4)(ii), the 1. property party to execute a consent to extend the period of limitations would be what is now known as , formerly known as , formerly known as , formerly known as

The name of the taxpayer should read:

20054

=:=

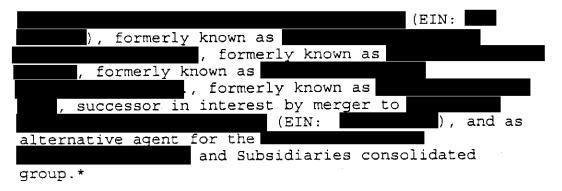
(EIN:
), formerly known as
, formerly known as
, formerly known as
, successor in interest by merger to
(EIN:), and
as alternative agent for the
and Subsidiaries consolidated group.*

Further down on that page of the form, should be typed an asterisk followed by additional information, as follows:

*With respect to the consolidated income tax liability of Subsidiaries for the taxable period ending .

2. Under Temp. Treas. Reg. section 1.1502-77T(a)(4)(ii), the property party to execute a consent to extend the period of limitations would be what is now known as formerly known as formerly known as , formerly known as

The name of the taxpayer should read:



Further down on that page of the form, should be typed an asterisk followed by additional information, as follows:

*With respect to the consolidated income tax liability of and Subsidiaries for the taxable period ending July 31,

FACTS

This advice is dependent upon the accuracy of the facts and assumptions upon which this advice is based. You are encouraged to review these facts and assumptions carefully for accuracy. If a fact or assumption is not accurate you should contact Counsel to ascertain the continuing validity of this advice.

1. and Subsidiaries consolidated group filed a return for the taxable period ending May 15, ____. The period of limitations is scheduled to expire The EIN of was On or about) created a new subsidiary known as On or about in a reverse triangular merger under I.R.C. section 368(a)(2)(E),2 when was acquired by was acquired by when merged, with ceasing to exist and being the surviving corporation. As a result of this merger, the shareholders of received stock in ; however, for purposes of this opinion, we shall assume that the value of the stock received by the former shareholders of constituted less than to of the fair market value of the outstanding shares in and its subsidiaries were members of After , & Subsidiaries consolidated group. On or about merged into 's (formerly known as) other subsidiary, (EIN: has changed its names several times over the years, as follows: Time Period Name

 $^{^{2}}$ A merger under I.R.C. section 368(a)(2)(E) is a statutory merger.

). As a result of this merger, sexistence ceased was the surviving corporation. For purposes of this opinion, we shall assume that this was a merger to which I.R.C. section 381(a) applies. (EIN:) and Subsidiaries consolidated group filed a return for the taxable period ending July 31, The period of limitations is scheduled to expire On or about created a new subsidiary known as (EIN: . To our knowledge, never had an EIN of its own. On or about , in a reverse triangular merger under I.R.C. section 368(a)(2)(D),3 (formerly known as and merged, with ceasing to acquired by exist and being the surviving corporation. As a result of this merger, the shareholders of received stock in ; however, for purposes of this opinion, we shall assume that the value of the stock received by the former shareholders of constituted less_than fair market value of the outstanding shares in On the same date, changed its name to the name of that of the corporation it had just acquired, . Since the merger, has used the same EIN as the original , which ceased to exist. That EIN is s former consolidated group were After members of the & Subsidiaries consolidated group. changed its name to it changed its name to · On it changed its name to was sold and is no longer owned by .

³ A merger under I.R.C. section 368(a)(2)(D) may be a statutory merger. For purposes of this opinion, we shall assume that it was a statutory merger.

<u>ANALYSIS</u>

A. Governing Legal Principles

Treas. Req. § 1.1502-77(a) generally provides that the common parent is the sole agent for each member of its consolidated group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Thus, the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Id. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. Where the common parent remains in section 1.1502-6(a). existence, even if it no longer is the common parent, it remains the agent for the group with regard to years for which it was the common parent of the group. Treas. Reg. §§ 1.1502-77(a), 1.1502-77T(a)(4)(i).

A group remains in existence for a tax year if the common parent remains as the common parent and at least one subsidiary that was affiliated with it at the end of the prior year remains affiliated with it at the beginning of the year, whether or not one or more corporations have ceased to be subsidiaries at any time after the group was formed. Treas. Reg. § 1.1502-75 (d).

Since neither nor is in existence, neither one can be the agent for its consolidated group. Accordingly, we look to whether there are any alternative agents.

Temp. Treas. Reg. section 1.1502-77T, captioned "Alternative Agents of the Group (temporary), applies to waivers for taxable years for which the due date (without extensions) of the consolidated return is after September 7, 1988. Temp. Treas. Reg. § 1.1502-77T(b). In this case, the due dates of the consolidated returns at issue are both after September 7, 1988. The issue is who are the proper parties to consent to extending the statutes of limitations on assessment with regard to the

⁴ This temporary regulation was issued September 7, 1988. Any temporary regulation issued after November 20, 1988, expires within three years. Since this temporary regulation predates November 20, 1988, it did not expire within three years. I.R.C. § 7805(e).

consolidated group and the consolidated group. The alternative agent rules apply whether or not the common parent remains in existence.

Temp. Treas. Reg. section 1.1502-77T(a)(3) provides that a consent to extend the statutory period of limitations with respect to a consolidated group, given by any one or more corporations referred to in paragraph (a)(4) is deemed to be given by the agent of the group. Temp. Treas. Reg. section 1.1502-77T(a)(4) lists the following alternative agents to act on behalf of the group:

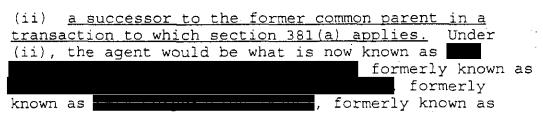
- (i) the common parent of the group for all or any part of the year to which the notice or waiver applies,
- (ii) a successor to the former common parent in a transaction to which I.R.C. section 381(a) applies,
- (iii) the agent designated by the group under Treas. Reg. \$1.1502-77(d), or
- (iv) if the group remains in existence under Treas. Reg. §1.1502-75(d)(2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

The regulation provides that a waiver of the statute of limitations with respect to the consolidated group given by any one or more corporations referred to in paragraph (a)(4) therein is deemed to be given by the agent of the group. First we will look for alternative agents for then we will look at alternative agents for

1. Alternative Agent for

Temp. Treas. Reg. section 1.1502-77T(a)(4) provides for several alternative agents:

(i) the common	<u>parent of the</u>	group for	all or any par	<u>:t</u>
of the year to	which the waive	er applies	. Under (i),	
the agent would				
agent since	has ceased to	exist.		



known as that it succeeded to in a transaction to which section 381(a) applies.

- (iii) the agent designated by the group under section 1.1502-77(d). Under (iii), there would be no agent since the group has not made any designation.
- (iv) if the group remains in existence under section 1.1502-75(d)(2) or (3), the common parent of the group at the time the waiver is given. Under (iv), when was acquired by, and became a member of, another consolidated group, consolidated group, stopped being the common parent and the consolidated group ceased its existence.

 's merger into was not a reverse acquisition under Treas. Reg. section 1.1502-75(d)(3) because shareholders received less than soft the fair market value of the stock of Thus, under (iv) there would be no alternative agent.

2. Alternative Agent for

Temp. Treas. Reg. section 1.1502-77(T)(a)(4) provides for several alternative agents:

- (i) the common parent of the group for all or any part of the year to which the waiver applies. Under (i), the agent would be the agent since has ceased to exist.
- (ii) a successor to the former common parent in a transaction to which section 381(a) applies. Under (ii), the agent would be what is now known as formerly known as that it succeeded to in a transaction to which section 381(a) applies.
- (iii) the agent designated by the group under section 1.1502-77(d). Under (iii), there would be no agent since the group has not made any designation.

(iv) if the group remains in existence under section

1.1502-75(d)(2) or (3), the common parent of the group

at the time the waiver is given. Under (iv), when

was acquired by, and became a member of, another

consolidated group,

consolidated group,

stopped being the common parent

and the consolidated group ceased its existence.

's merger into was not a reverse acquisition

under Treas. Reg. section 1.1502-75(d)(3) because shareholders received less than of the fair market

value of the stock of

Thus, under (iv) there would be no alternative agent.

B. Appropriate Language for Forms 872:

1. Language for

Under the name of the taxpayer, it should read:

	(EIN:
), formerly known as
	, formerly known as
	, formerly known as
	, successor in interest by merger to
	(EIN: and
as	alternative agent for the
	and Subsidiaries consolidated group.*

Further down on that page of the form, should be typed an asterisk followed by additional information, as follows:

2. Language for

Under the name of the taxpayer, it should read:

(EIN:
), formerly known as
, formerly known as
, formerly known as
, formerly known as
, successor in interest by merger to
(EIN:), and as
alternative agent for the

CC: WR: SCA: SD: POSTF-110348-92

and Subsidiaries consolidated group. *

Further down on that page of the form, should be typed an asterisk followed by additional information, as follows:

*With respect to the consolidated income tax liability and Subsidiaries for taxable period ending July 31,

If you have any questions concerning this advisory opinion, please direct them to the undersigned at (619) 557-6014. Thank you:

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

> GORDON L. GIDLUND Associate Area Counsel (LMSB)

By: ROBERT E. CUDLIP Attorney